IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.174 OF 2004

Suresh Ramchandra Narayan-
pethkar and others .... Petitioners
Vs.
Vasudev Sakharam Aurangabadkar,
since deceased, through legal
heirs & representatives:
1a. Mrs. Indirabai Vasudev
Aurangabadkar & others .... Respondents

Shri Y.V. Divekar i/b M/s. Divekar & Co.
for the Petitioners.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 25, 2004

P.C:

1. Heard the learned Advocate for the petitioners.

2. The petitioners challenge the order passed by the trial Court rejecting the application filed by the petitioners under Order VII, Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that the suit on the face of it is barred by the law of limitation. The trial Court has rejected the application while reserving right in favour of the petitioners to raise the issue of limitation and need for adjudication of the said issue based on the evidence to be led by the parties. Placing reliance in the decisions in the matter of **Tarlok Singh v. Vijay Kumar**

Sabharwal, reported in 1996 (3) SCALE 558, **T.L. Muddukrishana and another v. Smt. Lalitha Ramchandra Rao,** reported in AIR 1997 SC 772 and **Ramalingam Chettiar v. P.K. Pattabiraman and another,** reported in AIR 2001 SC 1185 and referring to para 12 of the unamended plaint, it was sought to be argued by the learned Advocate for the petitioners that, undisputedly, the specific performance of the agreement was refused by the petitioners by a letter dated 17-6-1977 and therefore the relief of specific performance having not been prayed for within the period of three years from the said day, the suit was apparently barred by the law of limitation.

3. Few facts relevant for considering the contentions sought to be raised by the petitioners are that the agreement in question was executed on 20-11-1967 with the defendant No.1 by the plaintiff. The defendant No.1, however, sold the property which was the subject-matter of the said agreement to the petitioners on 29-6-1977 by a registered sale deed. The plaintiff issued a notice to the defendant No.1 which was replied on 17-6-1977 repudiating the agreement and refusing the performance thereof. The plaintiff filed the suit on 20-6-1977 for mandatory injunction and for getting the document registered without asking any relief against the defendant No.2 though he was joined as a formal

party. The cause of action was stated to have arisen on 17-6-1977 in view of the refusal to perform the agreement. During the pendency of the suit, an application dated 8-12-1982 came to be filed under Order VI, Rule 17 of the C.P.C. for amendment of the plaint and the suit was converted from the suit for injunction to suit for specific performance, pursuant to grant of the said application by an order dated 25-4-1983. In view of absence of pecuniary jurisdiction to the Court before whom the suit was pending, the same was transferred to the Court of Civil Judge, Senior Division and it was re-numbered as Special Civil Suit No.111 of 1983. The plaint was further amended by an order dated 27-1-1994 whereby the defendant No.3 was added as the party to the suit. It was again amended by an order dated 22-1-1993 whereby the defendant Nos.4 and 5 were added as the parties to the suit. In fact, the application for joining the defendant No.3 was filed on 5-5-1991 and the application for joining the defendant Nos.4 and 5 was filed on 14-8-1991. The suit thereafter was again registered as Regular Civil Suit No.1381 of 2000. On 10-7-2002 the petitioners filed an application under Order VII, Rule 11 of the C.P.C. for rejection of the plaint on the ground that the suit is barred by the law of limitation. The same has been rejected by the impugned order and hence the present petition.

4. It is not in dispute that the application for amendment, whereby the suit was converted from the suit for mandatory injunction to suit for specific performance, was allowed by order dated 25-4-1983 and it was never challenged by any of the defendants to the suit. Once the said amendment was allowed, obviously it would relate back to the date of filing of the suit and undisputedly, the suit was filed in the year 1977 while the cause of action for filing the suit, as disclosed in the plaint, is that it arose in June, 1977 consequent to refusal for specific performance of the agreement by the defendant No.1. Being so, on the face of the plaint it cannot be said that the suit is barred by the law of limitation. Undoubtedly, the defendant No.3 onwards were joined subsequent to the filing of the suit and considering the same and bearing in mind the provisions of law comprised under Order 1, Rule 10 of the C.P.C. r/w Section 21 of the Limitation Act, if the issue of bar of limitation against those defendants or any one of them is raised in the matter, the same will have to be decided by the trial Court on the basis of the evidence to be led by the parties. However, it cannot be said at this stage, that on the face of the plaint itself the suit is barred by the law of limitation, either against the petitioners or any other defendant. Being so, the impugned order does not disclose any jurisdictional error as such so as to warrant interference therein in

revisional jurisdiction, as it safeguards the right of the petitioners to agitate the issue of limitation in the course of the trial of the suit.

5. As regards the decision of the Apex Court in **Tarlok Singh's** case (supra), undoubtedly, the rights of the parties to the raise the plea of limitation even after allowing the amendment to the suit was specifically reserved and in those facts the Apex Court had held that the suit was filed beyond the period of limitation.

6. In **Ramalingam Chettiar's** case (supra), it was a decision in relation to the scope of Section 21 of the Limitation Act and pertaining to the impleadment of the parties during the pendency of the suit and does not relate to the issue pertaining to the amendment to the pleadings in the plaint or the written statement.

7. In **T.L. Muddukrishana's** case (supra), the original suit for injunction was filed within the period of three years from the date of cause of action. However, the application for amendment for converting the suit into a suit for specific performance was filed beyond the period of the said three years and accordingly the said application was disallowed. The order of the trial Court was sought to be challenged before the High Court, without any success and the matter was carried before

the Apex Court. The appeal was dismissed by the Apex Court observing that:-

> "The suit for mandatory injunction is filed and the specific performance was sought for by way of an amendment. The cause of action is required to be stated initially in the plaint but it was not pleaded. It was sought to be amended, along with an application for specific performance which, as stated earlier, was rejected. Under these circumstances, even by the date of filing of the application, namely, November 5, 1992, the suit was barred by limitation."

In the background of all those facts, the appeal was dismissed. Obviously, in the said suit, an application for amendment to convert the suit from the suit for mandatory injunction to suit for specific performance was filed beyond the period of three years from the date of cause of action and therefore the said application itself was rejected by the trial Court and the same was confirmed by the High Court as well as by the Apex Court. In the case in hand, the application for amendment was allowed by the trial Court and the order

in that regard was never challenged by any of the defendants, including the petitioners.

8. In the facts and circumstances of the case in hand, therefore, none of the decisions sought to be relied upon are of any relevancy to the petitioners to seek the intervention of this Court in the impugned order.

9. In the absence of any jurisdictional error on the part of the trial Court while passing the impugned order, it does not warrant interference in revisional jurisdiction and hence the petition is rejected.

10. Certified copy expedited.